COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 170 of 2004

New India Assurance Co. Ltd. …. **Appellant.**

Versus

Smt. Anjali Jagta
and others. ……**Respondents.**

Coram: Hon'ble P.C.Verma, J.,
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, ***(in short the Act)*** against the judgment and Award dated 27-2-2004 passed in M.A.C. Case No. 26 of 1997, Smt. Anjali Jagta & others Vs. Sri Narendra Kumar & others, by Motor Accident Claims Tribunal/Add. District Judge, Hardwar ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.5,95,800/- as compensation along with interest @ 8% per annum, as mentioned in the impugned order, in favour of the claimant-respondent Nos. 1 to 5 against the O.P. No.4-appellant under Section 166 of the Act. Aggrieved, the Insurance Company- appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the accident in question was the result of contributory negligence; that the driver of the bus involved in the accident was not holding a valid driving licence and that the quantum of award is exorbitant and the Tribunal has failed to appreciate the evidence on record.

Brief fact of the case, riving rise to the present appeal, are that Arvind Jagat ***(the deceased)*** was going on Scooter No. UP 10B-2711 from Hardwar to Bhaguwala accompanied by Shankar Jagat as pillion rider on 28.3.1997. When he reached ahead of Shyampur, the said scooter was hit by bus No. UP 20C-0211, which

was driven rashly and negligently by its driver, with the result the deceased sustained grievous injuries and died on the spot. Hence, the claim petition has been field by the legal heirs and dependents of the deceased. The opposite parties contested the claim petition by filing their written statements. The opposite party no.4-appellant has filed its written statement (39-B) and has asserted that the bus was insured in the name of Narendra Kumar with the Insurance Company from 10-1-1997 to 9-1-1998. It has also been pleaded that the owners of the vehicles were not having valid papers including valid driving licence at the time of accident and that the compensation claimed is excessive. The learned Tribunal framed necessary Issues in the case. The claimants have filed photocopies of F.I.R., Post Mortem Report, Death Certificate, Insurance, Registration and driving licence in documentary evidence and have examined three witnesses in oral evidence. On the other hand, the O.Ps. have filed photocopy of contract/bond and have produced D.W.1 Narendra Kumar (owner of the offending bus) in the witness box. Ultimately, the learned Tribunal has held that the motor accident resulting into injuries and death of the deceased was caused due to rash and negligent driving of the offending bus of UPSRTC No. U.P. 20C-0211 by its driver. It has also been held that the offending bus was duly insured with the appellant and the owner of the bus was holding all valid papers of the vehicle. It has also been found that the driver of the bus, Keshav, was holding a valid driving licence. Finally, the Tribunal has awarded compensation of rS. 5,95,800/- in faovur of the claimants along with interest @ 8% per annum, as mentioned in the impugned order, against the O.P. No.4-appelalnt.

We have heard learned counsel for the Insurance Company-appellant, Sri T.A.Khan, as well as learned counsel for the respondents, Sri A.N.Sharma, and have gone through the entire material on record including the impugned judgment and award.

The learned counsel for the appellant, New India Assurance Company, vehemently argued before us that the driving

licence produced before the learned Tribunal (paper no. 55-Kha), which has been relied upon by the Tribunal, is not a valid driving licence. It has been submitted that the alleged driving licence was issued in the name of one Azeem, son of Sri Ibney Hassan and not in favour of Keshav Singh as has been stated before the learned Tribunal, therefore, the driving licence produced in the case under appeal is a fake one. Learned counsel has made a reference to Annexure-3 filed along with memo of appeal, which is D.L. Verification report of Sri S.K. Agarwal, Investigator, dated 28-11-1998. We have closely considered this aspect of case. Even if it may by taken that the driver of the vehicle was not holding a valid driving licence at the time of accident, the Insurance Company cannot be absolved from its liability to pay the compensation. We are supported in our view by The Hon'ble Apex Court in the case of ***"National Insurance Company Limited Vs. Swaran Singh and others" (2004(3), S.C.C., 297) in SUMMARY OF FINDINGS, i.e. para 110(iii) has observed that 'Mere absence, fake or invalid driving licence or disqualification of the driver of driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time."*** Therefore, in view of the decision of the Hon'ble Apex Court in the aforesaid case, we are of the view that the Insurance Company-appellant be directed first to satisfy the entire amount under the impugned award before the executing court/Tribunal concerned and then to file its objections before the Tribunal for redressal of its grievances relating to the dispute on the point of driving licence. On being the amount of impugned award satisfied by the appellant-Insurance Company, the Tribunal after giving opportunity of hearing to the owner of the offending bus, i.e. O.P. Narendra Kumar, respondent no.6 will decide the controversy in accordance with the provisions of the Act and in case, ultimately,

the Tribunal finds favoru with the contention of the appellant-Insurance Company as provided by law, the Insurance Company may proceed to recover the amount from the insured/owner of the bus in question.

No other point was urged or argued before us in this appeal.

With the observations aforementioned, the appeal is disposed of finally, No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

21-09-2004 **(B.S.Verma, J.)** **(P.C. Verma, J.)**

RCP